## REMARKS

In the 22 March 2007 *Office Action*, the Examiner rejects all pending claims, Claims 2-19 and 24-27. Applicant thanks the Examiner with appreciation for the careful consideration and examination given to the Application. In response to the Office Action, Applicant amends certain claims to clarify Applicant's claimed invention. It is believed that no new matter is submitted as at least ¶¶ 4-5, 20-21, and 78-81 of Applicant's originally filed *Specification* fully support the clarifying amendments (all *Specification* cites made to US 2002/0123905).

Applicants submit this response solely to facilitate prosecution. As such, Applicants reserve the right to present new or additional claims in this Application that have similar or broader scope as originally filed. Applicants also reserve the right to present additional claims in a later-filed continuation application that have similar or broader scope as originally filed. Accordingly, any amendment, argument, or claim cancellation is not to be construed as abandonment or disclaimer of subject matter.

After entry of this Response, Claims 2-11, 14-19, 24-26, and 28-30 are pending in the Application. Applicant respectfully asserts that these claims are in condition for allowance and respectfully requests reconsideration of the claims in light of the following remarks. Applicant believes that all pending claims are allowable for the following reasons.

### I. Applicant's Pending Claims

As the Examiner will recall, embodiments of Applicant's invention are directed toward clinical operational and gain sharing systems. According to some embodiments, the present invention is a clinical operational information management system that measures clinical utilization and costs. As illustrated in Fig. 3, a process embodiment begins by allocating resources for a specific clinical procedure. The specific clinical procedure is conducted during which time the practitioner utilizes a portion of the allocated resources.

During the specific clinical procedure data is collected related to the allocation of the resources and the conducted specific clinical resource. This collected data is electronically stored in a database. From the collected data, the process identifies reduction operations (such as reduction in waste and costs) of the resources for the specific clinical procedure. The identification of reduction operations occurs prior to establishing a benchmark, because the established benchmark is based upon the identified reduction operations and the utilization of the

resource. After the benchmark has been established, the specific clinical procedure is standardized based upon the benchmark. Subsequently, the standardization can be used for conducting the specific clinical procedure, such that fewer resources are allocated and used. Reducing the products and resources required for a specific clinical procedure, reduces cost and that reduction in cost can be shared with the hospital and the procedure physicians saving the money by following the standardization. Thus, embodiments of the present invention set benchmarks not in the abstract, but with specificity and related to specific clinical procedures.

## II. Applicant's Currently Pending Claims Are Allowable Pursuant to 35 USC § 103

In response to the *Office Action*, Applicant presents several clarifying amendments in an effort to advance prosecution. In light of these clarifying amendments, Applicant respectfully asserts that the currently pending claims are allowable over the cited reference combinations because the cited reference combinations do no set forth a proper *prima facie* case of unpatentability. Moreover, and especially in light of the clarifying amendments, Applicant respectfully asserts that cited reference combinations do not teach or suggest Applicant's claimed invention as a whole as required by § 103.

As MPEP § 2143 provides, a *prima facie* case of obviousness requires three factual findings. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim features as a whole. All three findings must be present to properly support a *prima facie* case of obviousness.

The Supreme Court has recently reaffirmed the "functional approach" to obviousness determinations, which dictates that a combination is not obvious if it yields unpredictable results. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (US 2007). The Federal Circuit has also stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In Re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

In light of Applicant's above-presented amendments, it is believed that this case is now in condition for allowance. Indeed, Applicant respectfully asserts that the previously cited reference combinations do not teach or fairly suggest Applicant's claimed invention. Further,

the currently claimed features recited in the pending claims are not a predictable result from the teachings of the cited reference combinations.[1] For example, the cited combinations do not teach or fairly suggest, for example, the below features now claimed:

(a) collecting "data including patient quality, patient clinical presentation, diagnostic procedure indication, interventional procedure indication, diagnostic procedure results, interventional procedure results, patient length of stay, and patient medication usage" as claimed in Claim 24;

(b) "establishing preferred clinical practice standards based upon the standardized practice patterns to increase resource utilization efficiency" as claimed in Claim 24;

(c) "providing on a predetermined frequency basis established benchmark data to a plurality of medical facilities via a computer network, the benchmark data including regional, national, and best-in-class benchmarks" as claimed in Claim 25;

(d) "determining a benchmark procedure area cost basis for a category of procedures for use in calculating the savings, wherein determining the benchmark procedure area cost basis comprises: (a) determining an average benchmark costs of a procedure area; (b) determining actual costs for the procedure area; and (c) comparing the average benchmark costs to the actual costs" as claimed in Claim 28;

(e) "providing a recommended utilization amount of a resource for the specific clinical procedure and predicting cost savings by comparing the recommended utilization amount and an actual amount of used resources" as claimed in Claim 29; and

(f) "predicting expenses and cost savings opportunities based on a comparison of the benchmark and an actual amount of utilized resources" as claimed in Claim 30.

Accordingly, for at least the above reasons, Applicant respectfully asserts that the pending claims are patentable over the cited combinations. Applicant specifically asserts that the cited combinations fail to support a *prima facie* case of obviousness and also fail to satisfy the requirements of § 103, especially in light of Applicant's clarifying amendments. Withdrawal of the § 103 rejection is, thus, respectfully requested.

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[1] Applicant continues to respectfully assert that the applied references are not prior art for the various reasons stated in previous responses, thus those reasons are incorporated by reference herein. Further, Applicant continues to respectfully assert that certain of the reference combinations are not proper for the various reasons stated in previous responses, thus those reasons are also incorporated by reference herein.

## III. RCE, Extension Of Time Petition, & Fees

Applicant files this *Response* within six months of the 22 March 2007 *Office Action* and with a number of claims less than or equal to those claims previously paid for. Accordingly, Applicant petitions for a three-month extension pursuant to 37 C.F.R. § 1.136 and the undersigned submits the appropriate petition fee via the EFS-Web electronic filing system.

Applicant also respectfully requests continued examination pursuant to 37 CFR § 1.114. Applicant submits this response as the required RCE submission and also submits the required RCE fee via the EFS-Web electronic filing system.

This application was originally filed as a small entity, but since filing, the application no longer qualifies as a small entity. Applicant has already apprised the office of this change in entity status. Applicant, however, can continue paying small entity fees in accordance with 37 C.F.R. § 1.27(g)(1). MPEP § 509.03; *see* also *Daimlerchrysler AG v. Feuling Advanced Techs., Inc.*, 276 F. Supp. 2d 1054, 1060-61 (S.D. Cal. 2003). Thus, small entity fees are paid herein.

No other fees are believed due. The Commissioner is authorized, however, to charge any fees that may be required, or credit any fee overpayment, to Deposit Account No. 20-1507.

## IV. Conclusion

This *Response* is believed to be a complete response to the *Office Action* mailed 22 March 2007. Applicant respectfully asserts that the currently pending claims are in condition for allowance and respectfully requests passing of this case in due course of patent office business. If the Examiner believes there are issues that can be resolved by a telephone interview, or there are any informalities remaining in the application which may be corrected by an Examiner's amendment, a telephone call to Hunter Yancey at (404) 885-3696 is respectfully requested.

Respectfully submitted,

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